

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 19 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 administration and to make an appropriation.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 4-13-2-18.1 IS ADDED TO THE INDIANA
- 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 8 [EFFECTIVE JULY 1, 2008]: **Sec. 18.1. The budget agency shall, to**
- 9 **the extent permitted by federal law, withhold allotments of state**
- 10 **and federal funds for highways, roads, and streets from a political**
- 11 **subdivision that violates IC 5-2-18 until the political subdivision is**
- 12 **no longer in violation of IC 5-2-18.**
- 13 SECTION 2. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
- 14 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 15 1, 2008]:
- 16 **Chapter 18. Citizenship and Immigration Status Information**
- 17 **Sec. 1. As used in this chapter, "political subdivision" has the**
- 18 **meaning set forth in IC 36-1-2-13.**
- 19 **Sec. 2. A political subdivision may not enact an ordinance, a**
- 20 **resolution, a rule, or a policy that prohibits or limits another**
- 21 **political subdivision or a governmental body (as defined in**
- 22 **IC 5-22-2-13), including a law enforcement officer (as defined in**
- 23 **IC 5-2-1-2), a state or local official, or a state or local government**
- 24 **employee, from the following with regard to information**

concerning the citizenship or immigration status of an individual:

- (1) Communicating or cooperating with federal officials.
- (2) Sending to or receiving information from the United States Department of Homeland Security.
- (3) Maintaining information.
- (4) Exchanging information with another federal, state, or local government entity.

Sec. 3. A political subdivision may not knowingly assist a person who is not lawfully present in the United States in obtaining employment, housing, higher education, or other types of financial assistance."

Page 52, between lines 31 and 32, begin a new paragraph and insert:
 "SECTION 37. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2008]: **Sec. 21.5. (a) As used in this section, "law enforcement officer" means a:**

- (1) police employee;
- (2) county sheriff;
- (3) county police officer;
- (4) county police reserve officer;
- (5) city police officer;
- (6) city police reserve officer;
- (7) town marshal;
- (8) deputy town marshal; or
- (9) member of a consolidated law enforcement department established under IC 36-3-1-5.1.

(b) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.

(c) The memorandum of understanding described in subsection (b) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.

(d) The superintendent shall designate appropriate law enforcement officers to be trained under the memorandum of understanding described in subsection (b).

(e) The department shall apply for federal funding, as available, for the costs associated with training law enforcement officers under the memorandum of understanding described in subsection (b).

(f) A law enforcement officer certified as trained in accordance with the memorandum of understanding described in subsection (b) may enforce federal immigration and customs laws while performing within the scope of the law enforcement officer's

1 duties.

2 (g) The superintendent shall coordinate efforts, as needed, with
3 the executive director of the department of homeland security to
4 address issues of national security in implementing this section.

5 SECTION 38. IC 12-7-2-9, AS AMENDED BY P.L.93-2006,
6 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2008]: Sec. 9. "Agency" means the following:

8 (1) For purposes of IC 12-10-12, the meaning set forth in
9 IC 12-10-12-1.

10 (2) For purposes of IC 12-12.7-2, the meaning set forth in
11 IC 12-12.7-2-1.

12 (3) For purposes of IC 12-31-1, the meaning set forth in
13 IC 12-31-1-1.

14 SECTION 39. IC 12-7-2-76.6 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 76.6. (a) "Emergency
16 medical condition", for purposes of IC 12-15-12, has the meaning set
17 forth in IC 12-15-12-0.3.

18 (b) "Emergency medical condition", for purposes of IC 12-31-1,
19 has the meaning set forth in IC 12-31-1-2.

20 SECTION 40. IC 12-7-2-85.1 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2008]: Sec. 85.1. "Federal public benefit", for
23 purposes of IC 12-31-1, has the meaning set forth in IC 12-31-1-3.

24 SECTION 41. IC 12-7-2-142 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 142. "Political
26 subdivision", for purposes of the following statutes, has the meaning
27 set forth in IC 36-1-2-13:

28 (1) IC 12-8.

29 (2) IC 12-13-4.

30 (3) IC 12-31-1.

31 SECTION 42. IC 12-7-2-169.7 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2008]: Sec. 169.7. "SAVE program", for
34 purposes of IC 12-31-1, has the meaning set forth in IC 12-31-1-4.

35 SECTION 43. IC 12-7-2-185.5 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2008]: Sec. 185.5. "State or local public
38 benefit", for purposes of IC 12-31-1, has the meaning set forth in
39 IC 12-31-1-5.

40 SECTION 44. IC 12-31 IS ADDED TO THE INDIANA CODE AS
41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
42 2008]:

43 ARTICLE 31. RESTRICTIONS ON PUBLIC BENEFITS

44 Chapter 1. Restrictions on Public Benefits to Illegal Aliens

45 Sec. 1. As used in this chapter, "agency" means any state
46 administration, agency, authority, board, bureau, commission,

committee, council, department, division, institution, office, service, or other similar body of state government.

Sec. 2. As used in this chapter, "emergency medical condition" has the meaning set forth in 42 U.S.C. 1396b(v)(3).

Sec. 3. As used in this chapter, "federal public benefit" has the meaning set forth in 8 U.S.C. 1611.

Sec. 4. As used in this chapter, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

Sec. 5. As used in this chapter, "state or local public benefit" has the meaning set forth in 8 U.S.C. 1621.

Sec. 6. This chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Sec. 7. Except as provided in section 9 of this chapter or in federal law, an agency or a political subdivision may not provide federal public benefits or state or local public benefits to an individual who is not:

- (1) a United States citizen; or
- (2) a qualified alien who is lawfully present in the United States under the federal Immigration and Nationality Act.

Sec. 8. Except as provided in section 9 of this chapter or in federal law, an agency or a political subdivision shall verify, in the manner provided in section 10 of this chapter, the lawful presence in the United States of each individual who:

- (1) is at least eighteen (18) years of age; and
- (2) applies for:
 - (A) federal public benefits; or
 - (B) state or local public benefits;

that are administered by the agency or political subdivision; before the agency or political subdivision may provide federal public benefits or state or local public benefits to the individual.

Sec. 9. An agency or a political subdivision is not subject to the prohibition in section 7 of this chapter or the requirements in section 8 of this chapter for any of the following:

- (1) A purpose for which lawful presence in the United States is not required by law, ordinance, or regulation.
- (2) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition of the individual involved and are not related to an organ transplant procedure.
- (3) Short term, noncash, in-kind emergency disaster relief.
- (4) Public health assistance for:
 - (A) immunizations with respect to a disease for which an individual may be immunized; and
 - (B) testing and treatment of symptoms of communicable

1 diseases regardless of whether symptoms are caused by a
2 communicable disease.

3 (5) Programs, services, or assistance, including soup kitchens,
4 crisis counseling and intervention, and short term shelter, as
5 specified by the United States Attorney General in the United
6 States Attorney General's sole and unreviewable discretion
7 after consultation with appropriate federal agencies and
8 departments, that:

9 (A) deliver in-kind services at the community level,
10 including services through public or private nonprofit
11 agencies;

12 (B) do not condition the:

13 (i) provision of assistance;

14 (ii) amount of assistance provided; or

15 (iii) cost of assistance provided;

16 on a recipient's income or resources; and

17 (C) are necessary for the protection of life or safety.

18 (6) Prenatal care.

19 Sec. 10. An agency or a political subdivision shall verify the
20 lawful presence in the United States of an individual described in
21 section 8 of this chapter by requiring the individual to execute a
22 verified affidavit stating that the individual is:

23 (1) at least eighteen (18) years of age; and

24 (2) either of the following:

25 (A) A United States citizen.

26 (B) A qualified alien who is lawfully present in the United
27 States under the federal Immigration and Nationality Act.

28 Sec. 11. (a) If an individual executes an affidavit under section
29 10 of this chapter stating that the individual is a qualified alien
30 lawfully present in the United States, an agency or a political
31 subdivision shall verify the lawful presence of the individual to
32 determine eligibility for federal public benefits or state or local
33 public benefits through the SAVE program.

34 (b) An affidavit executed under section 10 of this chapter may
35 be presumed to be proof of an individual's lawful presence in the
36 United States under this chapter until eligibility is verified under
37 this section.

38 Sec. 12. An agency or a political subdivision shall report any
39 errors or significant delays by the SAVE program to the:

40 (1) United States Department of Homeland Security; and

41 (2) secretary of state.

42 Sec. 13. An agency or a political subdivision may adopt a
43 variation of the requirements set forth in this chapter to:

44 (1) improve the efficiency of verifying an individual's lawful
45 presence in the United States under this chapter;

46 (2) reduce delay in verifying an individual's lawful presence
47 in the United States under this chapter; or

(3) provide for an adjudication in the case of unique individual circumstances under which the procedures set forth in this chapter would impose unusual hardship on a legal resident of Indiana.

Sec. 14. A person who knowingly or intentionally makes a false, fictitious, or fraudulent statement of representation in an affidavit executed under section 10 of this chapter commits a Class D felony.

Sec. 15. An agency may adopt rules and a political subdivision may adopt an ordinance or a resolution to carry out the requirements of this chapter.

SECTION 45. IC 21-14-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 10. Restriction on Resident Tuition

Sec. 1. An individual who is not lawfully present in the United States is not eligible on the basis of lack of residence within Indiana to pay the resident tuition rate (as determined by the state educational institution).

SECTION 46. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) As used in this section, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of ~~his~~ **the individual's** alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated

in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law.

SECTION 47. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter. 1.7. Public Contract for Services; Unauthorized Aliens

Sec. 1. As used in this chapter, "contractor" means a person that has or is attempting to enter into a public contract for services with a state agency or political subdivision.

Sec. 2. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 3. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13. However, the term does not include a hospital organized and operated under IC 16-22-2, IC 16-22-8, or IC 16-23.

Sec. 4. As used in this chapter, "public contract for services" means any type of agreement between a state agency or a political subdivision and a contractor for the procurement of services.

Sec. 5. As used in this chapter, "state agency" has the meaning set forth in IC 4-6-3-1.

Sec. 6. As used in this chapter, "subcontractor" means a person that:

- (1) is a party to a contract with a contractor; and**
- (2) provides services for work the contractor is performing under a public contract for services.**

Sec. 7. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 8. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor if the state agency or political subdivision knows that the contractor or a subcontractor of the contractor employs or contracts with an unauthorized alien.

Sec. 9. Before a state agency or political subdivision may enter into a public contract for services with a contractor, the contractor shall certify in a manner that does not violate federal law that the contractor, at the time of the certification, does not employ or contract with an unauthorized alien.

Sec. 10. (a) A contractor or a subcontractor may not knowingly

1 employ or contract with an unauthorized alien.

2 (b) If a contractor violates this section, the state agency or
3 political subdivision shall require the contractor to remedy the
4 violation not later than thirty (30) days after the date the state
5 agency or political subdivision notifies the contractor of the
6 violation.

7 Sec. 11. (a) Except as provided in subsection (b), if a contractor
8 fails to remedy a violation within the thirty (30) day period
9 provided under section 10(b) of this chapter, the state agency or
10 political subdivision shall terminate the public contract for services
11 with the contractor for breach of the public contract for services.

12 (b) If a contractor employs or contracts with an unauthorized
13 alien but the state agency or political subdivision (whichever the
14 contractor has a public contract for services with) determines that
15 terminating the public contract for services under subsection (a)
16 would be detrimental to the public interest or public property, the
17 state agency or political subdivision may allow the public contract
18 for services to remain in effect until the state agency or political
19 subdivision procures a new contractor.

20 (c) If a state agency or political subdivision terminates a public
21 contract for services under subsection (a), the contractor is liable
22 to the state agency or political subdivision for actual damages.

23 Sec. 12. A contractor may file an action with a circuit or
24 superior court having jurisdiction in the county to challenge:

25 (1) a notice of a violation to the contractor under section 10(b)
26 of this chapter not later than twenty (20) days after the
27 contractor receives the notice; or

28 (2) a termination of a public contract for services under
29 section 11(a) of this chapter not later than twenty (20) days
30 after the state agency or political subdivision terminates the
31 public contract for services with the contractor.

32 Sec. 13. If a contractor uses a subcontractor, the subcontractor
33 shall certify to the contractor in a manner that does not violate
34 federal law that the subcontractor, at the time of certification, does
35 not employ or contract with an unauthorized alien.

36 Sec. 14. A contractor shall maintain on file a certification of a
37 subcontractor under section 13 of this chapter throughout the
38 duration of the term of a contract with the subcontractor.

39 Sec. 15. (a) If a contractor determines that a subcontractor is in
40 violation of this chapter, the contractor may terminate a contract
41 with the subcontractor for the violation.

42 (b) A contract terminated under subsection (a) for a violation of
43 this chapter by a subcontractor may not be considered a breach of
44 contract by the contractor or the subcontractor.

45 (c) A subcontractor may file an action with a circuit or superior
46 court having jurisdiction in the county to challenge a termination
47 of a contract under subsection (a) not later than twenty (20) days

1 after the contractor terminates the contract with the
2 subcontractor.

3 SECTION 48. IC 35-44-5 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2008]:

6 **Chapter 5. Offenses Relating to Illegal Aliens**

7 **Sec. 1. This chapter does not apply to the following:**

- 8 (1) A church or religious organization.
- 9 (2) The provision of assistance for health care items and
10 services that are necessary for the treatment of an emergency
11 medical condition of an individual.
- 12 (3) A health care provider (as defined in IC 16-18-2-163(a))
13 that is providing health care services.
- 14 (4) An attorney or other person that is providing legal
15 services.
- 16 (5) A person who:
 - 17 (A) is a spouse of an alien or who stands in relation of
18 parent or child to an alien; and
 - 19 (B) would otherwise commit an offense under this chapter
20 with respect to the alien.

21 **Sec. 2. As used in this chapter, "alien" has the meaning set forth**
22 **in 8 U.S.C. 1101(a).**

23 **Sec. 3. As used in this chapter, "federal immigration agency"**
24 **means an agency of the federal government responsible for the**
25 **determination of the immigration status of aliens present in the**
26 **United States.**

27 **Sec. 4. Except as provided in section 6 of this chapter, a person**
28 **who:**

- 29 (1) transports; or
- 30 (2) moves;

31 **an alien, for the purpose of commercial advantage or private**
32 **financial gain, knowing or in reckless disregard of the fact that the**
33 **alien has come to, entered, or remained in the United States in**
34 **violation of law commits transporting an illegal alien, a Class A**
35 **misdemeanor.**

36 **Sec. 5. Except as provided in section 6 of this chapter, a person**
37 **who:**

- 38 (1) conceals;
- 39 (2) harbors; or
- 40 (3) shields from detection;

41 **an alien in any place, including a building or means of**
42 **transportation, for the purpose of commercial advantage or**
43 **private financial gain, knowing or in reckless disregard of the fact**
44 **that the alien has come to, entered, or remained in the United**
45 **States in violation of law commits harboring an illegal alien, a**
46 **Class A misdemeanor.**

47 **Sec. 6. (a) Except as provided under subsection (b), an offense**

under section 4 or 5 of this chapter is a Class D felony if the:

(1) person has a prior unrelated conviction under section 4 or 5 of this chapter; or

(2) offense involved more than five (5) aliens.

(b) The offense is a Class C felony if the person has a prior unrelated conviction under this section.

Sec. 7. A determination by a federal immigration agency that an alien has come to, entered, or remained in the United States in violation of law creates a rebuttable presumption that the alien is in the United States in violation of law.

SECTION 49. IC 36-2-13-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7.5. (a)** The sheriff shall make a reasonable effort to determine the citizenship or immigration status of a person who is:

(1) charged with a felony or with operating a vehicle while intoxicated; and

(2) confined, for any period, in a county jail.

(b) If the person described under subsection (a) is a foreign national, the sheriff shall make a reasonable effort to verify that:

(1) the person has been lawfully admitted to the United States; and

(2) if the person has been lawfully admitted, the lawful status of the person has not expired.

(c) If the sheriff is unable to verify the lawful status of a person described under subsection (a) from documents in possession of the person, the sheriff shall attempt to verify the lawful status of the person not later than forty-eight (48) hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for the purpose of verifying the lawful status of person by the United States Department of Homeland Security.

(d) If the sheriff is unable to verify the lawful status of a person under this section, the sheriff shall notify the United States Department of Homeland Security that the lawful status of a person described under subsection (a) could not be verified."

- 1 Page 78, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 84. [EFFECTIVE JULY 1, 2008] **IC 35-44-5-4 and**
- 3 **IC 35-44-5-5, both as added by this act, apply only to crimes**
- 4 **committed after June 30, 2008."**
- 5 Renumber all SECTIONS consecutively.
(Reference is to ESB 19 as printed February 22, 2008.)

Representative Turner